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robertquidachayple

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FILED

DISTRICT COURT OF GUAM

NOV - 9 2006 *mbe*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT DUENAS QUIDACHAY,

Defendant.

CRIMINAL CASE NO. 06-00032

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, ROBERT DUENAS QUIDACHAY, enter into the following plea agreement:

1. The defendant agrees to plead guilty to Count I of an Indictment charging him with Conspiracy to Distribute more than five grams net weight of Methamphetamine Hydrochloride aka "ice", in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

2(a) The defendant, ROBERT DUENAS QUIDACHAY, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of trafficking in controlled substances, money laundering and other related offenses. Cooperation shall include providing all information known to defendant regarding any criminal activity, including but not limited to the offense to which he is pleading guilty. Cooperation will also

1 include complying with all reasonable instructions from the United States; submitting to
2 interviews by investigators and attorneys at such reasonable times and places to be determined by
3 counsel for the United States; producing to the United States all non-privileged documents
4 (including claimed personal documents) and other materials in the possession, custody or control
5 of defendant requested by attorneys and agents of the United States; and testifying fully and
6 truthfully before any grand juries, hearings, trials or any other proceedings where defendant's
7 testimony is deemed by the United States to be relevant. Defendant understands that such
8 cooperation shall be provided to any state, territorial, local or federal law enforcement agencies
9 designated by counsel for the United States. Further, it is understood and agreed that defendant
10 shall not directly, indirectly, or intentionally disclose anything defendant knows or had done
11 concerning the United States' investigation to anyone other than defendant's attorney. Defendant
12 agrees to take no steps directly or indirectly to warn any subject of this investigation that
13 defendant, a subject or anyone else is being investigated.
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15 2(b) The United States will make this cooperation known to the Court prior to the
16 defendant's sentencing. The defendant further understands that he remains liable and subject to
17 prosecution for any criminal schemes of which he does not fully advise the United States, or for
18 any material omissions in this regard.

19 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
20 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
21 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
22 success of any prosecution.

23 2(d) Except as otherwise herein provided, and in particular in Paragraph 11, the United
24 States agrees not to prosecute defendant for any other non-violent offenses which were
25 committed in the District of Guam, the District of the Northern Mariana Islands (CNMI), or the
26 Northern District of California, which defendant reveals to Federal authorities during his
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1 cooperation with the United States. This agreement is limited to crimes committed by defendant
2 in the Districts of Guam or the CNMI, and the Northern District of California.

3 3. The defendant, ROBERT DUENAS QUIDACHAY, understands and agrees that any
4 and all assets or portions thereof acquired or obtained by him as a direct or indirect result of his
5 drug trafficking shall be surrendered to the United States or any lawful agency as may be directed
6 by the Court.

7 4. The defendant, ROBERT DUENAS QUIDACHAY, further agrees to submit to a
8 polygraph examination by any qualified Federal polygraph examiner. The defendant understands
9 that such polygraph examinations may include, but will not be limited to, his knowledge of or
10 involvement in drug trafficking and money laundering activities and his knowledge of other
11 person's involvement in such activities. Defendant understands that the government will rely on
12 the polygraph in assessing whether he has been fully truthful.

13 5. The defendant, ROBERT DUENAS QUIDACHAY, understands that the minimum
14 sentence for Conspiracy to Distribute Methamphetamine Hydrochloride aka "Ice" in a quantity
15 of more than five grams net weight is a term of not less than five (5) years and the maximum is
16 not more than forty (40) years, a \$250,000 fine, and a \$100 special assessment fee, which must
17 be paid at the time of sentencing. Any sentence imposed may include a term of at least than five
18 (5) years supervised release in addition to such terms of imprisonment. Defendant understands
19 that if he violates a condition of supervised release at any time prior to the expiration of such
20 term, the court may revoke the term of supervised release and sentence him up to an additional
21 five (5) years of incarceration pursuant to 18 U.S.C. § 3583(e)(3).

22 5(b) If defendant cooperates as set forth in Paragraphs 2, 3, and 4 the government will
23 recommend that defendant receive the statutory minimum, or the minimum term of incarceration
24 recommended by the Sentencing Guidelines, whichever is greater.

25 5(c) If the United States believes the defendant has provided "substantial assistance" as
26 defined by Sentencing Guidelines 5K1.1, the United States will request the court to depart below
27 the statutory minimum pursuant to Title 18, United States Code, § 3553(e), and may, as provided
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1 by Sentencing Guidelines 5K1.1, request the court to depart below the applicable guidelines
2 range, when fixing a sentence for defendant or may, within one year after sentencing herein,
3 move the Court to order relief pursuant to Rule 35, Rules of Criminal Procedure to whatever
4 guidelines range or sentence of incarceration the United States in its sole discretion deems
5 appropriate. Defendant acknowledges that the United States has made no promise, implied or
6 otherwise, that defendant will be granted a departure for substantial assistance. Defendant
7 further acknowledges that no promise of any kind has been made that a motion requesting such
8 departure will be made except as otherwise provided herein.

9 The United States agrees to consider the totality of the circumstances, including but not
10 limited to the following factors, in determining whether, in the assessment of the U. S. Attorney,
11 defendant has provided substantial assistance which would merit a government request for a
12 downward departure from the mandatory statutory minimum or the applicable Guidelines
13 sentencing range:

14 (1) the United States' evaluation of the significance and usefulness of any assis-
15 tance rendered by defendant;

16 (2) the truthfulness, completeness, and reliability of any information or testimony
17 provided by defendant;

18 (3) the nature and extent of defendant's assistance;

19 (4) any injuries suffered or any danger or risk of injury to defendant or defendant's
20 family resulting from any assistance provided by defendant; and

21 (5) the timeliness of any assistance provided by defendant.

22 It is understood that even if a motion for departure is made by the United States, based
23 upon defendant's perceived substantial assistance, the final decision as to how much, if any,
24 reduction in sentence is warranted because of that assistance, rests solely with the District Court.

25 5(d) The government will recommend a fine within the Sentencing Guidelines range. If
26 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
27 full disclosure of his financial status to the United States Attorney's Office by completing a
28 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
Defendant understands that, by law, interest accrues on any remaining balance of the debt.

1 6. The defendant understands that to establish a violation of Criminal Conspiracy, as
2 charged pursuant to 21 U.S.C. 846, the government must prove each of the following elements
3 beyond a reasonable doubt:

4 First: between June 2006 through August 17, 2006, there was an agreement
5 between two or more persons to distribute methamphetamine hydrochloride aka
6 "ice"; and

7 Second: the defendant became a member of the conspiracy knowing of at least
8 one of its objects and intending to help accomplish it.

9 The defendant understands that to establish a violation of Distribution of Five or More
10 grams gross weight of Methamphetamine Hydrochloride as charged pursuant to 21 U.S.C. §
11 841(a)(1), the government must prove each of the following elements beyond a reasonable doubt:

12 First: the defendant knowingly delivered methamphetamine
13 hydrochloride aka "ice"; and

14 Second: that the defendant knew it was methamphetamine hydrochloride aka
15 "ice" or some other prohibited drug.

16 7. The defendant agrees that the Sentencing Guidelines apply to this offense. The
17 defendant also understands that the facts he stipulates to herein will be used, pursuant to 1B1.2,
18 in calculating the applicable guidelines level. The Government and the defendant stipulate to the
19 following facts for purposes of the Sentencing Guidelines:

20 (a) The defendant was born in 1976, and is a citizen of the United States.

21 (b) If the defendant cooperates with the United States by providing information
22 concerning the unlawful activities of others, the government agrees that any self-incriminating
23 information so provided will not be used against defendant in assessing his punishment, and
24 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
25 in determining the applicable guidelines range.

26 (c) Between June, 2006, and ending on August 17, 2006, the defendant intentionally
27 agreed and conspired with Judith Mateo to distribute more than five or more grams net weight of
28 methamphetamine hydrochloride aka "ice" to individuals on Guam. On August 17, 2006,
defendant drove a Mazda RX8 vehicle which was stopped for a traffic violation. Defendant had
methamphetamine hydrochloride aka "ice" in his pocket which he had received from Judith

1 Mateo. The vehicle contained methamphetamine hydrochloride aka "ice", drug scales, and
2 approximately \$6,004.00 in U.S. currency all the property of Judith Mateo. Earlier the defendant
3 drove Judith Mateo around for the purpose of selling "ice", and acting as her body guard. The
4 \$6,004.00 in United States currency was proceeds from their sales of methamphetamine.

5 (d) The defendant understands that notwithstanding any agreement of the parties, the
6 United States Probation Office will make an independent application of the Sentencing
7 Guidelines. The defendant acknowledges that should there be discrepancies in the final
8 sentencing guidelines range projected by his counsel or any other person, such discrepancies are
9 not a basis to withdraw his guilty plea.

10 8. The defendant understands that this plea agreement depends on the fullness and
11 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
12 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
13 material omissions or intentional misstatements or engage in criminal conduct after the entry of
14 his plea agreement and before sentencing, the government will be free from its obligations under
15 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
16 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
17 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
18 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
19 any and all information, in whatever form, that he has provided pursuant to this plea agreement
20 or otherwise; defendant shall not assert any claim under the United States Constitution, any
21 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
22 Evidence, or any other provision of law, to attempt to bar such use of the information.

23 9. Defendant understands that whether he has completely fulfilled all of the obligations
24 under this agreement shall be determined by the court in an appropriate proceeding at which any
25 disclosures and documents provided by defendant shall be admissible and at which the United
26 States shall be required to establish any breach by a preponderance of the evidence. In
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1 determining whether there has been a breach, the parties agree that any polygraph results and the
2 polygrapher's conclusions and opinions shall be admissible.

3 10. The defendant understands that his sentencing may be continued, at the sole
4 discretion of the United States, until after the indictment and trial of any associates involved.
5 This will also enable the Court to see the full degree of the defendant's cooperation. The
6 defendant therefore waives any right he may have to any speedy sentencing and hereby agrees to
7 any continuance of his sentencing date as it may become necessary.

8 11. In exchange for the government's concessions in this plea agreement, the defendant
9 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
10 the sentence imposed in this case. The defendant understands and agrees that the government
11 has bargained for a criminal conviction arising from his criminal conduct. If at any time
12 defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for whatever
13 reason, or is rendered invalid for any reason, or if any change of law renders the conduct for
14 which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
15 another charge encompassing the same or similar conduct. In such event, defendant waives any
16 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
17 constitutional restrictions as to the time of bringing such charges.

18 12. The defendant acknowledges that he has been advised of his rights as set forth below
19 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
20 had sufficient opportunity to reflect upon, and understands the following:

21 (a) The nature and elements of the charge and the mandatory minimum penalty provided
22 by law, if any, and the maximum possible penalty provided by law;

23 (b) His right to be represented by an attorney;

24 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the
25 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
26 and the right not to be compelled to incriminate himself, that is, the right not to testify;

(d) That if he pleads guilty, there will not be a further trial of any kind on the charges to which such plea is entered so that by entering into this plea agreement, he waives, that is, gives up, the right to a trial;

(e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court does not accept the sentencing recommendations of the government or his counsel;

(f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions about the offenses to which he has pled, under oath, and that if he answers these questions under oath, on the record, his answers may later be used against him in prosecution for perjury or false statement if an answer is untrue;

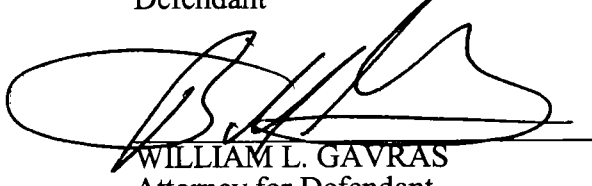
(g) That he agrees that the plea agreement is voluntary and not a result of any force, threats or promises apart from this plea agreement;

(h) The defendant is satisfied with the representation of his lawyer and feels that his lawyer has done everything possible for his defense.

DATED: 11-7-06


ROBERT DUENAS QUIDACHAY
Defendant


DATED: 11-7-06


WILLIAM L. GAVRAS
Attorney for Defendant

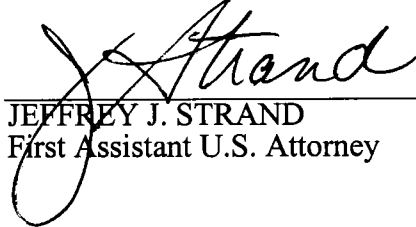
LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

DATED: 11/8/06

By:


ROSETTA L. SAN NICOLAS
Assistant U.S. Attorney

DATED: 11/8/06


JEFFREY J. STRAND
First Assistant U.S. Attorney